IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

CUSTOMS APPEAL NO.13 OF 2006

The Commissioner of Customs (General)
Mumbai. Appellant

vs.

LA GRANDE PROJECTS LIMITED Respondent

Mr.A.J.Rana, Senior Advocate with Mrs.S.V.Bharucha,
Advocate i/b.Dr.T.C.Kaushik for the appellant.

Mr.Shyam Mehta with Mr.N.Raja i/b.M/s.Bagla Dandekar &
Co. for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 21st March, 2006

ORAL JUDGMENT (Per R.M.Lodha,J.).

We heard Mr.A.J.Rana, the learned senior counsel for the appellant and Mr.Shyam Mehta, the learned counsel for the respondent.

2. The following substantial questions of law arise in this appeal:

(a) Whether on the facts and circumstances of the case and in law the CESTAT was justified in reducing the redemption fine imposed under Section 111(d), (f) and (n) of the Customs Act, 1962 to 30% of the CIF value of the goods without giving reasons and ignoring its earlier Order No.C-II/2268-7/WZB/2002 dated 10.1.2002, but relying upon the Order No.398/05-C, dated 2.5.2005, CESTAT, New Delhi?

(b) Whether on the facts and circumstances

of the case and in law the Tribunal was justified in restricting the penalty imposed upon the importer to 5% of CIF value of the goods without giving any reasons and ignoring its earlier Order No.C-II/2268-7/WZB/2002 dated 10.1.2002, but relying upon the Order No.398/05-C, dated 2.5.2005, CESTAT New Delhi?

(c) Whether the order No.398/05-C dated 2.5.2005 passed by CESTAT New Delhi settles any question of law? And if not, whether it was binding on the CESTAT, Mumbai?

3. The learned senior counsel and the counsel appearing for the parties agreed that appeal may be disposed of at this stage itself. We find the prayer reasonable and, accordingly, decide the appeal here and now.

4. We considered the submissions of the learned senior counsel and the counsel. We also considered the order dated 18th July, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench (for short, 'the Tribunal'). In our view, the order of the Tribunal is unsustainable since it does not disclose any reason much less justifiable reason for reducing the redemption fine to 30% and penalty to 5% of the CIF value of the goods. It is true that the order dated 2nd May, 2005 passed by the Tribunal in Appeal No.C-276/97-C was not challenged by the Department wherein redemption fine and penalty were reduced to 30% and 5% of the CIF value of the goods respectively but the said order, surely, could not have been relied upon as a precedent

binding in the facts and circumstances of the present case as the said order did not disclose any reason for reduction in the redemption fine and the penalty to 30% and 5% of the CIF value respectively. It needs no emphasis that upon the order of confiscation of the goods having been passed under Section 111(d), (f) and (n) of the Customs Act, 1962, if an option is given to redeem confiscated goods, the question of redemption fine and penalty shall depend on the facts and circumstances of each case. Isolated or repeated conduct of the petitioner is an important aspect that needs to be taken into consideration along with all other relevant factors justifying redemption of confiscated goods on payment of particular fine and penalty. No hard and fast rule can be applied. Each case has to be seen, examined and considered on its own facts. Each case of redemption fine and imposition of penalty, in our opinion, has to be independently examined; other cases cannot be binding as a precedent but at best give some guidance to enable the authority to reach the conclusion as to on what payment of fine and penalty, redemption of the confiscated goods must be permitted. In our considered view, the order passed by the Tribunal interfering with the order of the Commissioner does not meet the test of reason and, therefore, deserves to be set aside. The aforesaid questions stand answered accordingly.

5. The learned senior counsel and the counsel for the parties agreed that the matter may be remitted back to the Tribunal for fresh consideration in accordance with law.

6. We, accordingly, quash and set aside the order dated 18th July, 2005 passed by the Tribunal. Appeal Nos. C-330/97 and C-9/98 are restored to the file of Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai. The parties are directed to appear before the Tribunal on 17th April, 2006. The Tribunal is expected to decide the aforesaid two appeals expeditiously and, if convenient and possible, preferably within three months from the date of the appearance.

. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)